

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

SUNTECH OF CONNECTICUT, INC. *v.* LAWRENCE
BRUNOLI, INC., et al., SC 19970
Judicial District of Hartford

Evidence; Whether Appellate Court Properly Held that Trial Court's Improper Evidentiary Rulings Constituted Harmless Error. Lawrence Brunoli, Inc. (Brunoli) entered into a construction contract with the state to build a new technology center at Naugatuck Valley Community College. Suntech of Connecticut, Inc. (Suntech) entered into a subcontract with Brunoli to provide certain glass work for the project. The construction contract required that the project be completed within 640 days, but it was not finished for over two years. Suntech agreed under the terms of the subcontract not to assess damages or raise any claims against Brunoli related to delays with the project unless the state accepted responsibility for the delays and made payments related to them. The state did not accept responsibility for the delays in completing the project, and Suntech brought this action alleging that Brunoli breached the subcontract by hindering and interfering with its ability to complete its work on time and by wrongly withholding funds from it. The trial court ruled in favor of Brunoli, finding that the project was delayed primarily by design issues between the Department of Public Works and the project's architect, not by Brunoli. Suntech appealed, claiming that the trial court abused its discretion by precluding its witness, Rick Cianfaglione, from testifying about his observations and perceptions at the project site and about his conversations with Brunoli's employees on the ground that it constituted improper opinion testimony by a lay witness. Cianfaglione had been retained by the state to review change orders, permits, supplemental instructions and schedules during the course of the project. The Appellate Court (173 Conn. App. 321) affirmed the judgment, holding that, while the trial court's evidentiary ruling was improper, Suntech failed to demonstrate how it was harmed by it. The Appellate Court noted that Suntech did not challenge any of the trial court's factual findings and that Suntech did not proffer any facts to which Cianfaglione would have testified but, rather, merely represented the legal conclusion that his testimony would have shown that Brunoli, not the state or the architect, hindered and interfered with its ability to perform. Suntech was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly concluded

that Suntech failed to prove that the trial court committed harmful error when it precluded Cianfaglione from testifying as to his observations and perceptions.

STATE *v.* FERNANDO V., SC 19885
Judicial District of Stamford-Norwalk

Criminal; Whether Appellate Court Properly Held that Trial Court Erred in Excluding Testimony of Complainant's Boyfriend as to Whether Complainant had Exhibited Behaviors Associated with Sexual Assault Victims; Whether Exclusion of Testimony Harmful. The defendant was convicted of sexual assault in the second degree and risk of injury to a child. On appeal, he claimed that the trial court abused its discretion in precluding him from presenting the testimony of the complainant's boyfriend to demonstrate that the complainant had not exhibited behavioral characteristics that were consistent with those exhibited by sexual assault victims. The state countered that the trial court properly excluded the boyfriend's testimony because the testimony would have been wholly cumulative of the testimony that had been given by the complainant and her mother. The Appellate Court (170 Conn. App. 44) agreed with the defendant, reversed the judgment and remanded the case for a new trial. The Appellate Court held that the trial court improperly precluded the defendant from presenting relevant testimony from the complainant's boyfriend to contradict the testimony of the complainant's mother about behavioral changes that she had seen in the complainant and to demonstrate that the complainant had not exhibited behavioral characteristics that were consistent with those exhibited by sexual assault victims. It opined that the state opened the door to the boyfriend's testimony when it questioned the complainant and her mother about the complainant's behavior and elicited testimony from a psychologist about the behavioral characteristics of sexual assault victims. It determined that the defendant was entitled to produce his own witness in an effort to counter the state's evidence and demonstrate that the complainant had not exhibited any behavioral characteristics that could be associated with sexual assault victims. The Appellate Court found that the court's error was harmful because the boyfriend's testimony was important to the defense to the extent that it helped to depict the complainant as having been an ordinary high school girl who did not exhibit behaviors often attributed to sexual assault victims, thereby decreasing the likelihood that an assault had actually occurred. It further determined that the state's case was not an exceedingly

strong one in that there was no corroborating physical evidence and no witness to the alleged sexual assaults. The state appeals, and the Supreme Court will decide whether the Appellate Court properly held that the trial court abused its discretion in excluding the testimony of the complainant's boyfriend on the issue of whether the complainant had exhibited behaviors associated with sexual assault victims and that the exclusion of the testimony was harmful.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

DANIEL FILOSI, SUCCESSOR EXECUTOR (ESTATE OF
DONALD L. FILOSI, JR.) et al. v. ELECTRIC BOAT
CORPORATION et al., SC 19990/19991
Compensation Review Board

Workers' Compensation; Whether Employer Collaterally Estopped from Contesting Causation by Virtue of Causation Finding made in Federal Longshore and Harbor Workers' Action. Donald L. Filosi, Jr. was employed by Electric Boat Corporation for over thirty years. The plaintiffs, Filosi's estate and his dependent widow, pursued claims under the federal Longshore and Harbor Workers' Act and the Connecticut Workers' Compensation Act, alleging that exposure to asbestos during the course of Filosi's employment caused him to develop lung cancer, which resulted in his death. An administrative law judge awarded the plaintiffs benefits under the federal act, concluding that Filosi's disability and death from lung cancer were causally linked to his exposure to asbestos at work. The plaintiffs then argued in the state action that, as a result of the administrative law judge's finding, the defendants were estopped from relitigating the issue of whether there was a causal connection between Filosi's employment and his lung cancer. The trial commissioner disagreed, finding that the issue of causation had not been fully litigated in the federal proceeding and noting that the administrative law judge did not articulate the standard of proof to which the plaintiffs had been held in the federal case. The commissioner found that, as a result, he could not determine whether the causation standard applied in the federal action was the substantial contributing factor standard utilized in state workers' compensation cases or some lesser standard. The commissioner then determined that the plaintiffs had failed to prove their entitlement to benefits and dismissed their claims. The plaintiffs appealed to the Compensation Review Board, which reversed the com-

missioner's ruling that the defendants were not collaterally estopped from contesting the issue of causation. The board found that although the administrative law judge did not explicitly state the precise level of contribution necessary to satisfy the causation standard, it was clear that he found that the evidence satisfied the substantial contributing factor standard. The board noted that the administrative law judge weighed the conflicting evidence and then fully credited the testimony of the plaintiffs' expert witnesses, who opined that Filosi's exposure to asbestos at work was a substantial contributing factor in the development of his lung cancer. Electric Boat and its insurer appeal, claiming that the board improperly found that they were collaterally estopped from contesting causation in the state workers' compensation action because the federal administrative law judge did not clearly articulate the standard applied in the federal action and that the board improperly made a finding as to the standard applied based on the evidence presented in the federal action.

STATE *v.* AMELIA RHODES, SC 20070
Judicial District of Fairfield

Criminal; Sufficiency of Evidence that Defendant Constructively Possessed Gun; Sufficiency of Evidence that Defendant Knowingly Had Weapon in Motor Vehicle; Whether Trial Court Properly Instructed Jury on Charge of Having Weapon in Motor Vehicle. The defendant appeals from her conviction of criminal possession of a firearm and having a weapon in a motor vehicle. The defendant was arrested following an incident in which she engaged the police in a high speed chase while driving the rental car of her friend, a passenger who fired a gun at a crowd during the drive. The defendant claims on appeal that there was insufficient evidence to show that she constructively possessed her friend's gun to sustain her conviction of criminal possession of a firearm. The defendant also claims that there was insufficient evidence to show that she "knowingly had" the gun in the car for purposes of her conviction of having a weapon in motor vehicle in violation of General Statutes § 29-38. A person is guilty under that statute when that person "knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued," and the statute provides that "the presence of any such weapon, pistol or revolver, or machine gun in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof." The defendant argues that "knowingly

has” in § 29-38 should be interpreted as synonymous with “knowingly possesses” and that reference to the statute’s legislative history, its underlying policy objectives and similar statutes in other jurisdictions support her interpretation. The defendant claims that the Appellate Court misinterpreted § 29-38 in *State v. Mebane*, 17 Conn. App. 243 (1989), where it held that the statute “is not concerned with possession or ownership of a weapon, but rather aims to penalize those who know that there is a weapon inside a motor vehicle.” The defendant also argues that if the Supreme Court concludes that § 29-38 requires the state to prove that she knowingly possessed the gun in the car and that the state presented sufficient evidence to support the jury’s determination that she constructively possessed it, she is nonetheless entitled to a new trial on the § 29-38 charge because the trial court did not instruct the jury that the charge requires the state to prove possession.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys’ Office for the convenience of the bar. They in no way indicate the Supreme Court’s view of the factual or legal aspects of the appeal.

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